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No. 10-

IN THE

Supreme Court of the United States

JAMES S. PHELPS,
as Trustee, etc.,

Petitioner,

v.

ORANGE COUNTY ASSESSMENT
APPEALS BOARD NO. 1, et. al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

MARY A. LEHMAN
Counsel of Record
LAW OFFICES OF MARY A. LEHMAN
941 Orange Avenue, Suite 531
Coronado, CA 92118
(888) 843-3777
mary@lehmanappeals.com

234954

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED FOR REVIEW

Whether California Revenue & Taxation Code Sections 60 and 61, subdivision (g), violate the Contract, Equal Protection and Due Process Clauses of the United States Constitution when they are applied, as done and endorsed in a published decision of the California Court of Appeal, to cause a reassessment of real property that was vested in remainder beneficiaries of an irrevocable trust prior to the enactment of those statutes and prior to the 1978 adoption of California's Proposition 13 which amended the California Constitution to an acquisition property tax scheme.

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CITATIONS OF OPINIONS AND ORDERS

The opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, certified for publication, is reported at *Phelps v. Orange County Assessment Appeals Bd. No. 1*, 187 Cal. App. 4th 653 (2010) and is set forth in the appendix hereto. (App. 1a-26a.) The Order of the Superior Court of the State of California, County of Orange, is not reported and is set forth in the appendix hereto. (App. 26a-29a.) The Decision and Findings of Fact of the Assessment Appeals Board No. 1 for the County of Orange is also in the appendix. (App. 30a-44a.)

The Order of the Supreme Court for the State of California denying Petitioner's timely filed petition for review in *Phelps v. Orange County Assessment Appeals Board No. 1*, was filed on December 1, 2010, and is set forth in the appendix hereto. (App. 45a.)

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). This petition for a writ of certiorari is timely filed. The order of the Supreme Court for the State of California denying review was filed on December 1, 2010.

28 U.S.C. § 2403(b) may apply and, accordingly, this petition has been served on the Attorney General for the State of California.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CALIFORNIA CONSTITUTION ARTICLE 13A [TAX LIMITATION]

> SEC. 2. (a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

California Revenue and Taxation Code Section 60:

> A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

California Revenue and Taxation Code Section 61:

> Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:
>
> * * *
>
> (g) Any vesting of the right to possession or enjoyment of a remainder or reversionary

> interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

STATEMENT OF THE CASE[1]

John Wilson Phelps created a trust under his 1945 will and died in 1947. Pursuant to the probate court's decree of distribution issued in 1950 (containing substantially identical trust terms as set forth in the will), the trust came into existence as an irrevocable testamentary trust (the "Phelps Trust" or "Trust").[2] Petitioner and John W. Phelps II are the current Co-Trustees of the Trust. The Phelps Trust provides that John Wilson Phelps' wife (who died in 1970) and three children were the initial income beneficiaries during their lives. Trust corpus is to be retained in trust during the combined lifetimes of John Wilson Phelps' wife, children, and grandchildren living at the time of his 1947 death. The Trust is to terminate on the death of the last survivor of these, at which time trust corpus will be distributed to John Wilson Phelps' then living issue on the principle of representation.

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1. The following factual statement is taken in substance from the Court of Appeal's "Factual and Procedural Background" statement in *Phelps v. Orange County Assessment Appeals Bd. No. 1*, 187 Cal.App.4th 653, 656-659 (2010).

2. The terms of the trust were later modified by the probate court in 1983. (The term, "Phelps Trust" or "Trust" refers to these 1950 and 1983 orders specifying the terms of the testamentary trust.)

On April 16, 2002, John Wilson Phelps' son, Wilson W. Phelps ("Wilson"), died. Before his death, Wilson was an income beneficiary as to one-third of the trust income. Pursuant to the trust instrument, his four children (John Wilson Phelps' grandchildren) then became the current beneficiaries as to his one-third income interest, divided equally among them (each child received one-twelfth interest in the trust income).

Among the Phelps Trust's income producing assets at the time of Wilson's death were two parcels of real property in Fullerton, California, used as a shopping center (the "Fullerton Property"). Respondent/Real Party in Interest Webster J. Guillory, Assessor of Orange County (the "Assessor"), determined that a change in ownership under Revenue & Taxation Code section 60 ("Section 60") as to one-third of the Trust's Fullerton Property occurred when Wilson died in 2002. Accordingly, the Assessor reassessed at the current "full cash value" that one-third interest.

The Phelps Trust filed an application with the County of Orange Assessment Appeals Board No. 1 challenging the reassessment. The Board upheld the Assessor's position as to the Fullerton Property. (App. at 30a-44a.)

The Phelps Trust then filed a verified petition for writ of mandate in the Superior Court to set aside the Board's findings. In that petition, the Phelps Trust asserted, "as a matter of law, a change of ownership did not occur upon the death of Wilson W. Phelps and, consequently, those assessments were illegal and void." (1 Clerk's Transcript at 16.) The Superior Court denied the petition, concluding there was a reassessable change in ownership under

Section 60 in 2002, entitling the Assessor to reassess one-third of the Fullerton Property. (App. At 27a-29a.) The trial court entered judgment, and the Phelps Trust appealed to the California Court of Appeal, Fourth Appellate District, Division Three.

The California Court of Appeal affirmed, holding there was a change in ownership in 2002, when Wilson died and his interest in income as to one-third of the Fullerton Property passed to his children. Thus, the court held that property was reassessable under Section 60.

The Phelps Trust then filed a petition for review with the California Supreme Court. That court granted review but put the case on "hold" pending its forthcoming decision in *Steinhart v. County of Los Angeles*, 47 Cal.4th 1298 (2010). After the *Steinhart* decision was issued, the California Supreme Court vacated the *Phelps* appellate decision and remanded back to the California Court of Appeal, Fourth Appellate District, Division Three to reconsider in light of the *Steinhart* decision.

In supplemental briefing, the Phelps Trust asserted that the recent *Steinhart v. County of Los Angeles* decision confirms that the only "change of ownership" occurred in 1947 when John Wilson Phelps died. (Phelps Trust Supplemental Brief [filed in Court of Appeal on June 10, 2010] at 19; *see also* App. at 21a.) The Phelps Trust pointed out, however, that neither Proposition 13 nor Section 60 was effective in 1947. *Id.* In a published opinion, the California Court of Appeal affirmed its earlier holding. It found that, although there was a change in ownership in 1947, there was also a reassessable change in ownership as to one-third of the Fullerton Property when Wilson

died in 2002. (App. at 22a.) A petition for rehearing was filed by the Phelps Trust, which was denied by the Court of Appeal.

The Phelps Trust then filed a timely Petition for Review with the California Supreme Court. That Petition for Review included a four-page argument with the heading "Reassessment Triggers for Trusts Have Evolved to an Unfair System of Taxation Which Violates Trust Taxpayers' Equal Protection Rights." (Phelps Trust Petition for Review [filed in Supreme Court on September 27, 2010] at 25-29.) In that petition, the Phelps Trust explained the inconsistent triggers for reassessment "violate trust beneficiaries' equal protection rights under the Fourteenth Amendment of the Federal Constitution (U.S. Const., amend. XIV, § 1) and California Constitution, Article 1, Section 7, subdivision (a)." (*Id.* at 28.) The Petition for Review was denied on December 1, 2010. (App. at 45a.)

REASONS FOR ALLOWANCE OF THE PETITION

In their 1978 primary election, California voters adopted Proposition 13 to amend California's Constitution with Article XIIIA which limits both the amount of property tax which may be levied and when property may be subject to reassessment. Specifically, the California Constitution now states, among other things, that a "change in ownership" of property subjects that property to reassessment at "full cash value." Cal. Const. art. XIIIA, §2, subd. (a). The effective date for this constitutional provision was July 1, 1979 (Cal. Const. art. XIIIA, §5), and the "full cash value" was defined as the county assessor's valuation as shown on the 1975-76

tax bill or thereafter the appraised value when a change in ownership has occurred (Cal. Const. art. XIIIA, §2, subd. (a)).

The California Legislature later enacted Revenue & Taxation Code section 60 ("Section 60") to define the constitutional term, "change in ownership," along with Revenue & Taxation Code section 61 ("Section 61") to give illustrative examples of how the Section 60 definition applied in various situations.[3]

To the extent Section 60 and Section 61, subdivision (g), are applied, as the California Court of Appeal did here, to treat an irrevocable trust's remainder interest that vested pre-1978 as a "change in ownership" of trust real property, the statutes are unconstitutional. When trustor John Wilson Phelps died in 1947, he transferred property to the trustees of an irrevocable trust, the Phelps Trust. California law and common-law principles long recognized by this Court hold that the remainder and intermediate beneficiaries named in that Phelps Trust obtained property rights and interests that vested at that time. That the beneficiaries did not acquire a current interest in trust income in 1947 (and therefore, did not have possession and enjoyment of trust income) is not relevant to the question of whether their interests vested under trust and property law. The crucial point is that the beneficiaries' interests in the trust and their right to the trust income were vested.

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3. Both statutes added Stats. 1979 ch. 242 §4, effective July 10, 1979; Section 60 has not been amended since; subd. (g) of Section 61 was initially lettered subd. (f) but effective January 1, 1997, was changed to subd. (g) and otherwise that subdivision has not been amended since initial 1979 adoption.

The California Court of Appeal here held that, in 2002, when certain vested remainder beneficiaries under the John Wilson Phelps Trust came into possession of the trust income, this was a reassessable change in ownership under Sections 60 and 61, subdivision (g).[4] As discussed below, under Supreme Court authority, this is an unconstitutional taking of the trust beneficiaries' rights in violation of the Contract and Due Process clauses of the United States Constitution. The Constitution and law of this Court mandate that only taxation statutes in effect at the time of vesting of a property right (versus actual possession or enjoyment of property) can be applied to a purported transfer of property.

A. California Amends Its Constitution Pursuant to Proposition 13 to Define Taxable Property Transfers, After 1975.

Proposition 13, termed the "California Taxpayers' Revolt," amended California's Constitution to place restrictions on property taxes and reassessments. Section 2 of Article XIIIA of the California Constitution now restricts the assessed value of real property. Specifically, subparagraph (a) of Article XIIIA section 2, specifies that appraisal of property (i.e., reassessment) at its "full cash value" may only occur "when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." Cal. Const. Art. XIIIA, § 2, subd. (a).

The terms "purchased" and "newly constructed" are defined in the constitutional amendment. However,

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4. No beneficiary has a current right to trust principal until he trust terminates.

"[b]ecause Proposition 13 did not explicate the meaning of 'change in ownership' [citations], it fell to the Legislature to define the phrase . . .. The main effort to create consistent and uniform guidelines to implement Proposition 13's undefined 'change in ownership' provision was undertaken by a 35-member panel . . .." *Pacific Southwest Realty Company v. County of Los Angeles*, 1 Cal.4th 155, 161 (1991). This panel, known as the "Task Force," recommended a definition of a "change in ownership" that was adopted verbatim by the California Legislature as California Revenue and Taxation Code Section 60 ("Section 60"). *Id.*

Section 60 provides: "A 'change in ownership' means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Thus, the current law in California states that any transfer of property that meets the elements of Section 60 is reassessable.

Furthermore, subdivision (g) of Section 61 provides that a "change in ownership" as defined in Section 60 includes the "vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest . . .."

B. The Federal Constitution Requires That Property Transfers Are Subject Only to the Tax Law in Effect at the Time the Property Right Vests.

In *Coolidge v. Long*, 282 U.S. 582 (1931), trustees petitioned this Court for a writ, claiming a Massachusetts inheritance tax statute was "repugnant to the contract clause of the Federal Constitution and the due process and

equal protection clauses of the Fourteenth Amendment." *Id.* at 593. The tax statute at issue in *Coolidge* became law after the declaration of the Coolidge irrevocable trust was executed. *Id.* at 595.[5] The issue was whether that inheritance tax statute was unconstitutional when applied to transfers of property rights that had "so vested prior to the taking effect of that tax statute that there was thereafter no occasion in respect of which the excise might constitutionally be imposed." *Id.* at 597.

In the case, Mr. & Mrs. Coolidge created an irrevocable trust which gave them a life estate in a property's income and divided the property's remainder interest among their five sons. This Court found that each son's one-fifth remainder interest was "immediately vested" in each of them at the moment of the execution of the irrevocable deed of trust. *Id.* at 597 (citations omitted.) Payment of income to the parents for their lives "did not operate to postpone the vesting in their sons of the right of possession or enjoyment." *Id.* Further, the sons' right to possession stemmed from the deed of trust and was not "derived" from or subject to transmission from the parents upon their death. *Id.* at 598. That the property was subject to divesture if a son died before the last survivor of their parents, this Court found irrelevant. After analyzing

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5. This was the second of two cases this Court heard concerning the Coolidge Trust. In the first case, this Court held that the federal revenue act violated the Fifth Amendment "insofar as it undertook to impose a tax on gifts fully consummated before its provisions came before Congress or before its passage." *Id.* at 595-96 (citations omitted). This Court noted the transfer of the property by decedent was prior to the passage of the Act and it was irrelevant "the conveyance was intended to take effect in possession or enjoyment at or after his death." *Id.* at 596.

consistent law from several jurisdictions, this Court found the sons' right to the property interest vested on the creation of Coolidge's irrevocable deed of trust. *Id.*[6]

Next, this Court assessed whether applying a tax statute that did not exist when the sons' right to that property had vested under the terms of the trust was unconstitutional. This Court confirmed that trust deeds are contracts protected under the Contract Clause of the federal Constitution. *Id.* at 595. Accordingly, states are prevented by this clause from enacting any subsequent legislation "to take or destroy rights which had vested under them." *Id.*.

Citing authority from the California Supreme Court, this Court explained: "It is the vesting in interest that constitutes the succession, and the question of liability to such tax must be determined by the law in force at that time." *Id.* at 604, *citing Hunt v. Wicht*, 174 Cal. 205, 209 (1917). This Court went on to cite with approval law from several states with the same rule. *Id.; e.g.* "[W]here there was a complete vesting of a residuary estate before the enactment of the transfer tax statute, it cannot be reached by that form of taxation." *Id.* at 603, citing *In Matter of Pell*, 171 N.Y. 48, 55 (1902). This Court reasoned that, if property rights are vested prior to enactment of a tax act, there is "in no legal sense a transfer of the property at the time of possession and enjoyment." *Id.* at 603.

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6. The result would be different, as this Court recognized, for other types of trust instruments, such as a revocable trust or a trust that contained a power of appointment. *Id.* at 598-599, 602. Similarly, a will that is probated is treated differently. *Id.* at 600-601.

Accordingly, this Court in *Coolidge* noted: "This court has not sustained any state law imposing an excise upon mere entry into possession and enjoyment of property, where the right to such possession and enjoyment upon the happening if a specified event had fully vested before the enactment." *Id.* at 600. The Court concluded that the vesting in *Coolidge* was complete when the irrevocable trust deeds of the Coolidge parents were executed. This Court explained a tax based on a later-enacted law would "diminish the value of these vested estates, to impair the obligation of a contract, and take private property for public use without compensation." *Id.* Accordingly, this Court held the state statute was unconstitutional because enforcing an excise tax that was enacted at a later time "would be repugnant to the contract clause of the Constitution and the due process clause of the Fourteenth Amendment." *Id.* at 605-606.

C. The Phelps' Trust Beneficiaries Property Rights Vested in 1947.

Where the jurisdiction of this Court is invoked to determine whether a state law is unconstitutional and the question turns on the terms of a contract, this Court determines for itself the contract's meaning and effect. *Coolidge*, 282 U.S. at 597. When John Wilson Phelps died in 1947, his will became irrevocable and the Phelps Trust was established as an irrevocable testamentary trust pursuant to the probate court's decree of distribution. As discussed, *supra*, this Court held "the overwhelming weight of authority" is that the transfer of property in such a situation occurs when an irrevocable trust deed takes effect and the beneficiaries are vested with their rights to property. *Id.* at 602. As also explained by this Court

in *Coolidge*, there is "in no legal sense a transfer of the property at the time of [later] possession and enjoyment." *Id.* at 603. Applying this law to the Phelps Trust, the transfer of the trust property occurred in 1947 when the trust became irrevocable and all beneficiaries' rights in trust property necessarily vested.

This same result is mandated by California law. In a recent decision, the California Supreme Court in *Steinhart v. County of Los Angeles*, 47 Cal. 4th 1298 held, when the trustor dies and the trust becomes irrevocable, all property interests are transferred and vested in all the trust beneficiaries collectively. *Id.* at 1320, 1324. Thus, in 1947, when John Wilson Phelps died and the Phelps Trust became irrevocable, all interests (possessory or remainder) were transferred and vested at that time. Specifically, the Phelps Trust granted vested and possessory life estate interests to John Wilson Phelps' surviving spouse and their three children (one of which was Wilson). At that same time, the terms of the Trust granted vested and future remainder interests to the issue of their children (i.e. their grandchildren then living). Accordingly, Wilson's children (John Wilson Phelps' grandchildren then living) had a vested property right in the Phelps Trust in 1947.

Steinhart and the law analyzed and approved by this Court in *Coolidge* confirm there was no new transfer by Wilson in 2002 to John Wilson Phelps' grandchildren. This is because the entire equitable interest in the trust property was transferred when the Trust became irrevocable in 1947. Although Wilson's children had a future interest that became possessory in 2002, the property rights to that interest were transferred to them from John Wilson Phelps in 1947 and were vested then.

Simply, John Wilson Phelps was the transferor in 1947 and not Wilson in 2002. Under the rule of *Steinhart* and the authority discussed and relied on by this Court in *Coolidge*, it is irrelevant whether some of those interests in the Phelps Trust property were immediate possessory life estates and others were future remainder interests.

In sum, when Wilson died in 2002, the previously vested interests of his children merely became possessory. But, as in *Coolidge*, this is not a transfer of property in 2002; it is just possession of a property right previously vested in 1947.

D. Certiorari Should Be Granted Because the California Court of Appeal's Interpretation of Reassessable Property Transfers Under Proposition 13 Is Unconstitutional.

Here, the California Court of Appeal, in a published decision, held that when Wilson died in 2002 and John Wilson Phelps' grandchildren came into possession of their share of one-third life interest income per the terms of the Phelps Trust, this triggered a tax reassessment under Section 60. However, as analyzed by this Court in *Coolidge* and the California Supreme Court in *Steinhart*, John Wilson Phelps' grandchildren's rights in that property were vested in 1947 when the Phelps Trust was executed and became irrevocable. John Wilson Phelps conveyed the entire equitable interest in trust property to all the collective trust beneficiaries, including those grandchildren, when the Phelps Trust became irrevocable at his death in 1947. As explained in *Coolidge*, there can be no new transfer in 2002 as to the beneficial interests that were already granted and vested in 1947 merely because those interests became possessory in 2002.

The rule set forth in *Coolidge* is that only the law in force at the time of the vesting of property rights can constitutionally apply to tax a transfer. Applying a law not extant at the time of vesting, merely because beneficiaries come in to actual possession and enjoyment of property at a later date (or, as with the Phelps Trust, possession of an interest in income), is a violation of the Contract and Due Process clauses of the federal Constitution. By its decision, the California Court of Appeal makes California's rule of reassessment on a "change in ownership" after the 1975 assessment (Cal. Const. art. XIIIA, §2, subd. (a)) unconstitutionally reach back and apply retroactively to a 1947 transfer of property.[7]

In sum, it was unconstitutional for the California Court of Appeal to hold that John Wilson Phelps' grandchildren's right to possess a property right in 2002 that was previously vested in 1947 was a new transfer and a new

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7. Although the tax statute at issue here in *Phelps* is not a *per se* tax on succession like the tax in *Coolidge*, the effect here and on the myriad other similarly situated cases is the same. California's Proposition 13 changed the property tax system in California to an acquisition system. *See Amador Valley Joint Union H.S. District v. State Board of Equalization*, 22 Cal.3d 208 (1978). Reassessment may now occur only when ownership changes. In California, when a trustor dies and the trust becomes irrevocable, as recognized in *Steinhart v. County of Los Angeles*, 47 Cal.4th 1298, there is a change in ownership of whatever real property is in that trust as to all trust beneficiaries collectively, present and remainder. In other words, for the Phelps Trust and similar situations involving testamentary and irrevocable inter vivos instruments, ownership changes by succession when a trustor dies and the trust is irrevocable. This triggers the negative tax consequence of reassessment. Thus, California's acquisition system of real property taxation, as it is applied to estates and trusts under current law, has the same effect as a tax on succession.

change in ownership subject to a tax reassessment in 2002 under Section 60. This is an unconstitutional application of Section 60 and Section 61 because these statutes, with their negative tax consequence of reassessment, did not exist when all the property interests—including those of John Wilson Phelps' grandchildren—vested in 1947. As explained in *Coolidge*, applying these current statutes to a 1947 vesting of property rights violates the Contract and Due Process clauses of the Constitution. Because every property interest in California under a trust that was executed and became irrevocable before 1975 is now subject to this same unconstitutional application of Sections 60 and 61, this Court should grant a writ of certiorari to resolve this important constitutional issue.

CONCLUSION

For all these reasons explained above, this Court should grant a writ of certiorari.

Respectfully submitted,

MARY A. LEHMAN
Counsel of Record
LAW OFFICES OF MARY A. LEHMAN
941 Orange Avenue, Suite 531
Coronado, CA 92118
(888) 843-3777
mary@lehmanappeals.com

APPENDIX A — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE, FILED AUGUST 16, 2010

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

G040428

(Super. Ct. No. 07CC09169)

JAMES S. PHELPS, as Trustee, etc.,

Plaintiff and Appellant,

v.

ORANGE COUNTY ASSESSMENT APPEALS BOARD NO. 1,

Defendant and Respondent;

WEBSTER J. GUILLORY, as Assessor, etc.,

Real Party in Interest and Respondent.

OPINION

Appendix A

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Law Office of Paul D. Draper, Paul D. Draper; Law Offices of Mary A. Lehman and Mary A. Lehman for Plaintiff and Appellant.

Freeman Freeman & Smiley, Joanne M. Frasca, Jessica S. Dorman-Davis and Lisa M. Burkdall for Carol B. Phelps as Amicus Curiae on behalf of Plaintiff and Appellant.

Paul, Hastings, Janofsky & Walker and Julian B. Decyk for Arthur D. Phelps as Amicus Curiae on behalf of Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Benjamin P. de Mayo, Nicholas S. Chrisos, County Counsel, and Laurie A. Shade, Deputy County Counsel, for Real Party in Interest and Respondent.

Plaintiff James S. Phelps, as trustee of the John Wilson Phelps Trust (trust), challenges the action of respondent Webster J. Guillory, Orange County Assessor (Assessor), in reassessing a shopping center complex (property) held by the trust upon the death of Wilson W. Phelps (Wilson), an income beneficiary of the trust, and the decision of respondent Orange County Assessment Appeals Board No. 1 (appeals board) to uphold the reassessment. Plaintiff contends the transfer of Wilson's interest as an income beneficiary to his four children did

not qualify as a change of ownership under Revenue and Taxation Code section 60.[1]

For a change of ownership to occur under section 60, there must be "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." Plaintiff contends the trust's income beneficiaries do not have a present interest in the improvements on the property because the improvements were constructed and are owned by the property's lessee and sublessees. Plaintiff also contends the income beneficiaries do not have the beneficial use of the property because they do not hold legal title. Finally, plaintiff contends that the beneficiaries' interest in the income flowing from the property is not substantially equal to the value of a fee interest because a lifetime income interest is inherently inferior to a fee.

This case returns to us after the California Supreme Court transferred it with directions to vacate our previous decision in this matter and reconsider the cause in light of *Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298 (*Steinhart*). We concluded in our previous opinion the trial court properly denied plaintiff's writ petition seeking to overturn the board's decision and the reassessment. We explained the income beneficiaries had a present interest in the improvements because these improvements constituted part of the property and the lease required the lessee to surrender the improvements to the lessor in

1. All statutory references are to the Revenue and Taxation Code, unless otherwise noted.

good condition at the close of the lease. We also concluded the beneficiaries have the beneficial use of the property because they receive income from it; the law does not require legal title to be held by those who are entitled to the beneficial use of a property. Finally, we noted a lifetime beneficiary receiving the rental value of a parcel of real property is considered under the law to be receiving value substantially equal to the value of the fee interest. After considering *Steinhart*, we find no basis to overturn the trial court's decision and therefore affirm the judgment denying plaintiff's writ petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

The trustor, John Wilson Phelps, created the trust as part of his will in 1945, which became irrevocable upon his death in 1947. The trust held real estate from which it derived income, and distributed the income to its beneficiaries. The trust instrument directed the trust to hold the property in trust during the lifetimes of Adele N. Phelps, Wilson, Arthur D. Phelps, Adele Phelps Spellacy, and the trustor's grandchildren living at the time of his death. The trust is scheduled to terminate on the death of the last survivor of the trustor's children and grandchildren living when the trustor died. Thereafter, the trust corpus will be distributed to the trustor's then living issue on the principle of representation.

Among the trust's income producing assets are parcels of real property in Fullerton now used as a shopping

center. The trustees executed a lease of the property in 1964 to Montgomery Ward & Co. The lease required the lessee to construct improvements on the unimproved land subject to the lessor's approval. The lessee agreed to surrender the improvements in good condition to the trust at the termination of the lease.

After Montgomery Ward & Co. went bankrupt, Target Corporation (Target) became the current lessee of the property. When Target took over, it spent approximately $7 million to renovate the main store on the property. Both Montgomery Ward and Target subleased portions of the property (retail and restaurant pads) to others who constructed improvements for retail and restaurant use. These improvements were constructed by the sublessees at their own expense and are owned by the lessee or sublessees for the duration of the lease. At the conclusion of the lease, these improvements are surrendered to the trust.

Upon the trustor's death, trust provisions directed the trustees to divide the trust's income among the trustor's widow and his three children. The trust provided that if any of the trustor's children died before the termination of the trust, their issue would take per stirpes. If any of the trustor's children died without issue, the decedent's share of the trust's net income was to be divided among the other children.

As of January 2002, the trust had three trustees, Wilson, John W. Phelps II, and James S. Phelps, who collectively held legal title to the trust's assets. Wilson

held a one-third interest as an income beneficiary. Wilson died in April 2002. Under the trust document, Wilson's interest in the net income of the trust was transferred to his four children, each of whom then became entitled to receive 1/12 of the trust's net income.

The assessor concluded the transfer of Wilson's interest to his four surviving children was a change in ownership under section 60 and reassessed their share of the property. The assessor appraised the entire property at $27,740,000 for the 2002 tax year, with the land valued at $14,740,000, and the improvements valued at $13 million. Target paid all of the assessed real property taxes and the trust subsequently filed an application to challenge the assessments with the appeals board. After a hearing, the appeals board upheld the assessor's position as to the parcel involved in this appeal.[2] The trust filed its verified petition for writ of mandate in the superior court, seeking to set aside the board's findings. After a hearing, the trial court denied the petition, concluding the transfer on Wilson's death constituted a change in ownership under section 60, entitling the Assessor to reassess the property.

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2. The reassessments were issued against property described as parcels 10, 11, and 14. The board ruled in favor of the trust as to parcel 10, and the trust has received a refund of the taxes paid on that assessment. The trust challenges only the board's findings as to parcels 11 and 14.

Appendix A

II

STANDARD OF REVIEW

"The interpretation and application of section 60 is a question of law. We review de novo a determination that an assessable change in ownership occurred under section 60." (*Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, 487 (*Reilly*).)

III

DISCUSSION

A. Wilson Held a Present Interest in the Property's Improvements, Which Passed to the New Income Beneficiaries

On June 6, 1978, California voters passed Proposition 13, officially titled the "People's Initiative to Limit Property Taxation." Proposition 13 amended the California Constitution by adding article XIIIA, which provides that "[t]he maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property." (Cal. Const., art. XIIIA, § 1, subd. (a).) The term "'full cash value' means the county assessor's valuation of real property as shown on the 1975-76 tax bill . . . , or, thereafter, the appraised value of real property when purchased, newly constructed, *or a change in ownership* has occurred after the 1975 assessment." (Cal. Const., art. XIIIA, § 2, subd. (a), italics added.)

Appendix A

Proposition 13 left the phrase "change in ownership" undefined. To "create consistent and uniform guidelines to implement Proposition 13's undefined 'change in ownership' provision," the Legislature established a 35-member Task Force on Property Tax Administration (task force). Members included legislative and State Board of Equalization staff, county assessors, trade associations, and lawyers in the public and private sectors. (*Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal.4th 155, 161 (*Pacific Southwest*).) The task force's work culminated in the Report of the Task Force on Property Tax Administration (task force report), which was submitted to the Assembly Committee on Revenue and Taxation on January 22, 1979.[3] The task force report provided recommendations that the Legislature adopted largely unchanged in a series of code provisions.

The task force report's key change-in-ownership test was adopted verbatim and is now codified as section 60, which has three parts: "'A "change in ownership" means [1] a transfer of a present interest in real property, [2] including the beneficial use thereof, [3] the value of which is substantially equal to the value of the fee interest.'" The task force recommended that this definition should control all transfers, both foreseen and unforeseen. (*Pacific Southwest, supra,* 1 Cal.4th at p. 162.) The task force also recommended the creation of "'statutory "examples" to elaborate on common transactions . . . .'" (*Id.* at p. 161.) Accordingly, the Legislature identified common types of transfers and categorized them. Those

3. We grant plaintiff's request for judicial notice.

transfers constituting a change in ownership are identified in section 61, and those not constituting a change in ownership are identified in section 62. (*Pacific Southwest,* at p. 161.) The present situation does not fall within any of the examples in section 61 or 62. Accordingly, we must consider whether the current transfer meets section 60's change of ownership test.

Plaintiff contends the transfer at issue was not a change in ownership under section 60 because none of the three prongs have been met. We disagree.

As to the first prong — present interest — plaintiff notes the Assessor separately appraised and assessed the land and improvements of the property, with the value of the improvements constituting almost one half of the assessments. Plaintiff contends the income beneficiaries do not have a present interest in the improvements and, accordingly, the assessor was not entitled to reassess them. Plaintiff notes that the lease requires the lessee to construct the improvements on the property, and asserts the lessee, not the lessor, holds the present interest in the improvements.

Auerbach v. Assessment Appeals Bd. No. 1 for the County of Los Angeles (2006) 39 Cal.4th 153 (*Auerbach*), is instructive. There, a retailer leased property owned by a trust. The lease required the retailer at its own expense to either renovate the existing building, or demolish it and construct a new one, but required the trust's approval before undertaking the improvements. The lease provided that the retailer owned the alterations or

new improvements during the lease term, but the retailer agreed to turn over all improvements on the property in good condition to the trust at the conclusion of the lease. The lease required the retailer to repair any damage to the property at its expense, but required the lessor to make any insurance proceeds available to the retailer for the repairs. Although the lease was silent on the issue, the evidence established that the retailer paid rent for the land, not the building on it. The retailer elected to demolish the existing building, and constructed a new one.

When the beneficiaries in *Auerbach* received their interests in the trust, they applied for the $1 million grandparent-grandchild reassessment exclusion under section 63.1. Although the assessor granted the exclusion, he concluded the trusts owned the building as well as the land for property tax purposes, and applied the exclusion to both, allocating 92 percent of the exclusion to the building and eight percent to the land. The trustee challenged this allocation, contending the trust owned only the land, not the building, and therefore the exclusion applied only to the land. The California Supreme Court agreed with the assessor, concluding the trust held a present interest in both the land and the building. The court noted that despite the lease's statement that the retailer owned the building, the provision requiring surrender of the building at the conclusion of the lease demonstrated that the trust held the fee interest in the building. (*Auerbach, supra,* 39 Cal.4th at p. 162.)

Here, as in *Auerbach,* the lease requires the lessee to surrender the improvements to the lessor in good

condition when the lease concludes. This suggests the trust's income beneficiaries hold a present interest in the property's improvements. Plaintiff contends, however, the present situation is distinguishable from *Auerbach* because (1) the trust has no right to unilaterally sell the property and improvements, (2) the lessee is entitled to any insurance proceeds if the lessee's improvements are damaged or destroyed, and (3) the lessee is entitled to any compensation paid for the taking of any of the improvements through eminent domain. After reviewing the lease, we conclude none of these matters distinguish the present case from *Auerbach.*

True, nothing in the lease expressly authorizes the trust to sell the property and its improvements, but nothing prevents the trust from doing so either. Indeed, section 12(d) of the lease specifically contemplates the possibility the lessor may sell the property, providing that the lessee shall not be required to pay any taxes assessed "upon the sale, transfer or assignment of the title or estate of the Lessor . . . ." Accordingly, the lack of an express provision authorizing the lessor to sell the entire property does not demonstrate the lessee owns the improvements.

Plaintiff's assertion the lessee is entitled to all of the insurance proceeds if the improvements are damaged or destroyed oversimplifies the issue. The lease's insurance provision requires the lessee to maintain insurance covering 100 percent of the replacement cost of the improvements, and that the lessee must hold any insurance proceeds as *a trust fund* for repairing and rebuilding the improvements. The lessee is required to repair or

rebuild damaged or destroyed improvements on the property at its own expense, except that within two years of lease termination, the lessee may avoid this obligation by assigning the lessor all of the insurance proceeds. The lessee is entitled to keep any remaining insurance proceeds only after all of the improvements have been restored or rebuilt to meet or exceed their value before the loss. Thus, the lease's insurance provisions actually support the Assessor's position that the improvements are owned by the lessor.

Plaintiff's assertion the lessee is entitled to receive all of the compensation from an eminent domain action taking all or part of the improvements is also mistaken. The lease does not give the lessee all the compensation received for the improvements, but only the "unamortized cost" of such improvements. In other words, as the lease term continues, the lessor obtains a greater right to any compensation received from an eminent domain proceeding affecting the improvements. This is consistent with the lease provision stipulating that the lessor is entitled to the improvements at the close of the lease term. Accordingly, we conclude Wilson held a present interest in the property's improvements, which passed to the new income beneficiaries upon his death.

B. Wilson Had the Beneficial Use of the Property That Was Transferred to the Income Beneficiaries

Plaintiff asserts the second prong of section 60's test for change in ownership is not met because Wilson never owned legal title to the property. We again disagree.

Appendix A

The question whether income beneficiaries of a trust have the beneficial use of the trust property was squarely addressed in *Reilly, supra,* 142 Cal.App.4th 480, in which the tax assessor reassessed trust-held real property after the income beneficiary died, and a new income beneficiary succeeded to the former's interests. The court noted the "'principle of trust law that the creation of a trust divides title — placing legal title in the trustee, and *equitable* title in the beneficiaries. [Citations.]'" (*Id.* at p. 489.) After review of the task force report, the court concluded that section 60's "focus is on the person or entity that enjoys the benefits of the property, not upon the fiduciary that holds title to property for the benefit of another." (*Reilly,* at p. 495.) The *Reilly* court noted the California Supreme Court in *Pacific Southwest, supra,* recognized "that a landlord who owned commercial property 'exercise[d] its beneficial interest by exacting rent from [the tenant] rather than acquiring physical control of the demised premises. . . .'" (*Reilly,* at p. 495, quoting *Pacific Southwest, supra,* 1 Cal.4th at p. 164.) Accordingly, *Reilly* concluded that "[t]he receipt of income generated by property qualifies as a 'beneficial use' of the property . . . ." (*Reilly,* at p. 495.)

Arguing that the beneficial use prong requires the holder of the interest to also hold legal title to the property, plaintiff cites the Assessment Appeals Manual of the California State Board of Equalization (manual), which addresses the "beneficial use" requirement as follows: "The *beneficial use* element requires the transfer must convey both legal and beneficial interests in the property." He also cites the following observation by the California Supreme Court in *Pacific Southwest*: "The

second prong of section 60 requires that to constitute a change in ownership there must be a transfer not only of bare legal title but also of the transferor's beneficial or equitable interest in the land." (*Pacific Southwest, supra,* 1 Cal.4th at p. 163.) Plaintiff has taken these statements out of context.

Specifically, the manual and the Supreme Court in *Pacific Southwest* were addressing the situation where a person conveys bare legal title, but retains a beneficial interest in the property. On this point, the task force report noted: "'Revocable living trusts are merely a substitute for a will. The gifts over to persons other than the trustor are contingent; the trust can be revoked or those beneficiaries may predecease the trustor. . . . [¶] If the trust is revocable it is excluded because the rights conferred are contingent. If the trustor is the sole beneficiary during his lifetime, his retained interest is considered to be "substantially equivalent in value" to the fee interest in any real property covered by the trust. He is therefore the true owner and the change in ownership does not occur *until* the property passes to the remaindermen on the trustor's death.'" (*Reilly, supra,* 142 Cal.App.4th at pp. 488-489, original italics.)

The present situation is different from the foregoing example because nothing was retained by Wilson when the new beneficiaries received their interests. Neither the manual nor *Pacific Southwest* touched on the situation where income from real property is passed on to new trust beneficiaries. We agree with the court's conclusion in *Reilly,* and hold that by receiving rent income from the

property as a beneficiary, Wilson had a beneficial use of the property, which passed to his successor beneficiaries on his death.

C. The Value of a Lifetime Interest in Income Is Substantially Equal to the Value of a Fee Interest

Plaintiff contends the third prong of section 60's change of ownership requirements, the value equivalency test, was not met because the value of Wilson's lifetime interest in income was not substantially equal to the value of a fee interest. The contention is not persuasive.

Again, *Reilly* addressed this issue and held that a trust beneficiary's lifetime interest in income from trust-held real property meets the value equivalency prong of section 60. (*Reilly, supra,* 142 Cal.App.4th at p. 498.) In reaching its decision, *Reilly* relied in part on *Leckie v. County of Orange* (1998) 65 Cal.App.4th 334 (*Leckie*), in which our division held that the transfer of a life estate in real property, where the grantor retained no interest in the property, constituted a change of ownership.

Here, plaintiff does not directly argue our division's decision in *Leckie* is incorrect, but nonetheless challenges its basic holding citing, as support, portions of the Supreme Court's decision in *Pacific Southwest.* There, the plaintiff sold an office building complex, and simultaneously acquired from the buyer a leaseback in one building for 60 years, 21 months, which covered 73 percent of the property. The assessor viewed the sale and leaseback as a change of ownership and reassessed the entire parcel. The Supreme

Court rejected the plaintiff's claim that the transaction satisfied none of section 60's three prongs. Regarding the value equivalence prong, the Supreme Court explained: "Because [the purchaser] acquired the entire fee, not only did the value of the interest transferred 'substantially equal . . . the value of the fee interest,' it was of identical value because it was a transfer of the fee itself. [Citation.] The property sold essentially for the market price, and plaintiff is now paying rent at the market rate. There is no indication that the property would resell for less than the market price. Hence, notwithstanding the reservation of an encumbrance in the form of an estate for years, the value of the transfer equaled that of a conveyance of fee simple." (*Pacific Southwest, supra*, 1 Cal.4th at p. 164.)

The Supreme Court then contrasted the situation in its case with the transfer of a life estate in which the grantor retained a reversionary interest. The court noted that such a transfer would not meet the value equivalency test "because the value of each divided interest in the estate would not approach that of a fee. A purchaser of the reserved estate would be buying a life estate *per autre vie* — a freehold estate, to be sure, but an estate of questionable value because subject to complete defeasance at an unknown time. Rare is the mortgagee willing to lend on the security of an estate so ephemeral." (*Pacific Southwest, supra*, 1 Cal.4th at p. 165, original italics.)

Our division in *Leckie* acknowledged the Supreme Court's comments regarding the value of a life estate, but noted that the Supreme Court's "comments were made, as dicta, in a discussion of a *retained* life estate, which is

clearly exempt from the change of ownership provisions." (*Leckie*, 65 Cal.App.4th at p. 340, original italics.) The Court of Appeal in *Reilly* further distinguished *Pacific Southwest*, as follows: "The court noted in dicta that a purchaser of a retained life estate limited to the grantor's life would have 'an estate of questionable value' because it would be subject to defeasance at an unknown time. [Citation.] Upon the grantor's death, the purchaser's interest would disappear and the purchaser would retain nothing of value. Here, by contrast, [the income beneficiary]'s interest in the trust property was measured by his own lifetime and not someone else's. The fact the trustee could sell the property during the term of the trust does not render [the income beneficiary]'s interest of questionable value, because he still would have a right to the income from the sale proceeds for the rest of his life." (*Reilly, supra*, 142 Cal.App.4th at p. 498.)

The distinction between the conveyance of a life estate in which the grantor retains the remainder and the conveyance of a life estate without any reservation becomes clearer when recognizing the purpose of the value equivalence test. The task force report viewed the value equivalence prong as "'necessary to determine who is the *primary owner* of the property at any given time. . . . [¶] A major purpose of this third element . . . is to avoid . . . unwarranted complexity by identifying *the primary owner*, so that only a transfer by him will be a change in ownership and when it occurs the whole property will be reappraised. . . .'" (*Leckie*, 65 Cal.App.4th at p. 338, first & second italics added.) By focusing on the primary owner, the assessor is not burdened with separately assessing

different estates within the same property, such as having to reassess a transferred life estate separately from the remainder interest. The task force's "treatment of life estates was focused on those retained by the transferor, such as when a parent transfers the family home to his children, but retains the right to live there during his life. [Citation.] The task force explained, 'Transfers with a retained life estate are not ownership changes until the life tenant dies. *The life tenant has the dominant or primary interest under the "value equivalence" element of the general change in ownership definition*, and there is no transfer of the *present interest* in the property until the life tenant dies and the property vests in the remainder.'" (*Leckie*, at p. 338, first italics added.) Accordingly, the task force report expressly considered a life estate sufficiently equal in value to a fee interest to meet the change of ownership test.

Moreover, as our division previously recognized in *Leckie*, Property Tax Rule 462.060(a), promulgated by the State Board of Equalization, provides: "The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse." (Cal. Code Regs., tit. 18, § 462.060, subd. (a).) This rule was adopted in August 1979 contemporaneously with section 60. "[A] contemporary administrative construction of a statute by the agency charged with its enforcement and interpretation, 'is entitled to great weight unless it is clearly erroneous or unauthorized.'" (*International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 930-931.)

Accordingly, we perceive no reason to depart from our division's previous decision in *Leckie*.

Plaintiff also contends, however, that even if a life estate is substantially equal to a fee interest under the third prong of section 60, Wilson's interest had less value than a life estate because his interest was defeasible. Specifically, under the trust instrument, an income beneficiary's interest would lapse upon that beneficiary's attempt at assignment, mortgage or hypothecation of his or her interest, or attempt to attack or contest any provision of the trust. Plaintiff reasons, "The more or less probability that such an interest would be lost would merely affect the marketplace's estimate of its value."

Each of the conditions Phelps cited that may defeat the beneficiaries' interest in receiving income from the trust is completely under the beneficiaries' control. Accordingly, we believe the effect on the value of the beneficiaries' interests would not be sufficient to affect the operation of the value equivalency test under section 60.

Plaintiff also makes a purported appeal to "logic and common sense" by comparing the value of his annual income from the property, $77,548, with the value of the property, $27,740,000, and asking the court if these two values are equal. Of course, this is not a fair comparison because the fair market value of a property is virtually always a multiple of the income derived from it, and the $77,548 figure is only one-third of the income received from the property. The transfer of Wilson's one-third interest in the property did not result in a reassessment

of the entire property, but only the third of it in which he had held an income interest. (See § 65.1 ["when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised"].)

Plaintiff asserts the trust receives no income from the restaurant and retail pads that were subleased by the property's lessee, and therefore the assessor should not have reassessed the parcels containing those pads. We disagree. Although the trust received no direct rent from those parcels, the parcels are part of the master lease from which it does derive income.

D. Steinhart v. County of Los Angeles (2010) 47 Cal.4th 1298

After we filed our original opinion affirming the trial court's denial of plaintiff's petition, the Supreme Court granted review and subsequently transferred the case to us for reconsideration in light of *Steinhart v. County of Los Angeles*, *supra*, 47 Cal.4th 1298 (*Steinhart*). We have received and reviewed supplemental briefing addressing the case (Cal. Rules of Court, rule 8.200),[4] and find no basis to overturn the trial court's judgment.

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4. We have received an application to file an amicus brief and a request for judicial notice from Dibby Allan Green. Defendant and real party in interest opposes the application on the ground it is untimely under California Rules of Court, rule 8.200(c). No specific rule contemplates amicus briefs following transfer of the case from the Supreme Court. (Compare rules 8.528(f) and 8.200(b) [contemplating supplemental briefs by the parties].) In any event, in the exercise of our discretion we deny the application and request for judicial notice.

Apper dix A

In *Steinhart*, a trust settlor transferred her residence to a revocable living trust. She was the sole present beneficiary of the revocable trust, and the trust document provided that upon her death, the trust became irrevocable and her sister had the right to occupy the residence during her lifetime with the remainder to their siblings and issue. (*Steinhart, supra*, 47 Cal.4th at p. 1303.) The court concluded a change of ownership occurred upon the settlor's death because her equitable and beneficial interest in the real property passed to the sister and the siblings.

Consistent with our analysis in part B above, the Supreme Court in *Steinhart* concluded trust beneficiaries hold "'an equitable estate or beneficial interest in' property held in trust and are 'regarded as the real owner[s] of [that] property.'" (*Steinhart, supra*, 47 Cal.4th at p. 1319.) *Steinhart* thus confirms our rejection, based on *Reilly, supra*, 142 Cal.App.4th 480, of plaintiff's contention the second prong of section 60's test for change in ownership was not met because Wilson never owned legal title to the property.

Plaintiff argues that in deciding whether a change in ownership has occurred, *Steinhart* requires the "court [to] look solely at what the transferor conveys." Plaintiff asserts "all vested interests (possessory or remainder) in the Phelps Trust were transferred when John Wilson Phelps died in 1947" and that "nothing" was transferred "when Wilson died in 2002 and his children received the right to [his] one-third life interest income per the terms of the Phelps Trust . . . because the transfer and the vesting of the property interests of Wilson's children in the Trust occurred in 1947." He asserts "there was

no new transfer by Wilson in 2002 because the entire equitable interest in the trust property was necessarily transferred" in 1947 and "[a]lthough Wilson's children's heretofore future interest became possessory in 2002, the property rights were transferred to them from John Wilson Phelps in 1947 and were vested then." He says, "Simply, John Wilson Phelps was the transferor and not Wilson. Under *Steinhart*, there is no assessable change in ownership."

We disagree. Although a change in ownership occurred in 1947, another ownership change occurred in 2002, when Wilson's entire equitable interest in the real property passed to Wilson's children. Plaintiff's focus on identifying a single "'transfer'" or transferor finds no support in *Steinhart*. Proposition 13 tracks real ownership of real property, which *Steinhart* determined follows the equitable estate. In 2002, Wilson no longer "'continued to own the property.'" (*Steinhart*, *supra*, 47 Cal.4th at pp. 1321, 1325, fn. 21 [quoting Proposition 13's ballot pamphlet that assessed value could be increased by no more than two percent per year "'as long as the same taxpayer continued to own the property'"].)

Citing Civil Code section 779, plaintiff argues Wilson's death did not result in a transfer of interest in trust property. Civil Code section 779 provides, "When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so

limited to them, and not as mere successors of the owner for life." Civil Code section 779 abolished in California the rule in *Shelley's Case* (1581) 76 Eng.Rep. 206. The rule provided that where an estate was conveyed or devised to a person for life, with the remainder to his heirs, the person received the fee and could transfer the estate and defeat the heirs' expectancy. (12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 11, p. 60.) We see nothing in Civil Code section 779 supporting plaintiff's argument no change of ownership occurred in 2002.

Plaintiff notes that under section 61, subdivision (g), a change of ownership includes, "Any vesting of the right to possession or enjoyment of a remainder or reversionary interest that occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63." He observes the section "appears to state that every time a life estate ends and the remainder interest vests in another, this is an assessable change in ownership." He contends *Steinhart* limits section 61, subdivision (g), to retained life estates and non-successive remainder interests. *Steinhart* did not involve successive transfers or vesting of remainder interests under a trust, and the court did not discuss section 61, subdivision (g), in this context. (See *Steinhart*, *supra*, 47 Cal.4th at pp. 1323-1324, & fn. 18; see also *id.* at 1325, fn. 22 ["[w]hether a change in ownership would occur should either Steinhart or any of her siblings transfer their interest in the residence is beyond the scope of this case"].) Cases are not authority for propositions not considered. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127.) Section 61,

subdivision (g), however, supports our conclusion the vesting of property rights in Wilson's children upon termination of Wilson's life interest effected a change of ownership.

Plaintiff repeats his contention, rejected in part C above, that even if a transfer of property occurred when Wilson died in 2002, the transferred interest was not substantially equal to the fee and fails under the third prong of section 60. As explained above, *Reilly* addressed this issue, and held a trust beneficiary's lifetime interest in income from trust-held real property meets the value equivalency prong of section 60. *Steinhart* did not disapprove *Reilly* or *Leckie*. (See *Steinhart*, *supra*, 47 Cal.4th at p. 1306 [noting Court of Appeal in *Steinhart* had disagreed with *Leckie*].) As noted above, the value equivalence prong is necessary to determine who the primary owner of the property is at any given time. (See *Leckie*, 65 Cal.App.4th at p. 338.) Nothing in *Steinhart* affects our analysis of this issue in part C.

We conclude the transfer of Wilson's interest as a trust beneficiary to the current beneficiaries constituted a change of ownership under section 60. Accordingly, we do not disturb the trial court's ruling denying plaintiff's request for writ of mandate.

IV

Disposition

The judgment is affirmed. Respondent is entitled to its costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, DATED MARCH 21, 2008

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

Date: 03/21/2008
Judicial Officer Presiding: Judge Geoffrey T. Glass
Clerk: Kathryn Williams

Event Type: Chambers Work

Case Title: PHELPS VS COUNTY OF ORANGE

Court had taken Petitioner's "*Writ of Mandate*" under submission on 2/25/08 and now takes this matter out of submission this date and makes his final ruling as follows:

This matter came before this court on a Petition for a Writ of Mandate, asking this court to order the Assessment Appeals Board No. 1 to reverse its decision to reassess the value of property transferred from Wilson Phelps to his four children.

The court DENIES the application for a Writ of Mandate.

The court, for its reasoning, adopts the arguments of the Orange County Assessor.

Appendix B

When John Phelps died in 1947, his property was transferred into an irrevocable trust. His wife and three children each got a lifetime interest in the income of the trust, and each was entitled to name beneficiaries for that share of the future income, which each in turn could pass on to his or her chosen beneficiaries. Since each beneficiary of the original trust got exclusive right to a prescribed portion of the income, the court considers that 1947 transfer to be a division of the corpus of the trust for tax purposes.

Wilson Phelps was an original beneficiary of the trust in 1947. When he died in 2002, he held a 1/3 interest in the income of the property. The income was the primary economic worth of the property. For all intents and purposes he owned 1/3 of the property as a tenant in common with the other beneficiaries.

Upon his death in 2002, the four children of Wilson Phelps became owners of equal shares in their father's interest in the property, each getting one quarter. The Orange County Assessor claims a right to reassess the property for property tax purposes.

The Trust argues that Wilson Phelps never owned more than 1/3 of his father's property, so any transfer of his interest would not meet the change in ownership requirements of Revenue Code § 60 because his interest could not be considered "substantially equal to the value of the fee interest." The trust argues that the fee interest should be the entire property owned by the John Phelps Trust. The Trust further argues that Wilson's children

only got 8.33% of the John Phelps' estate, and therefore they did not get an interest substantially equal to the fee interest.

On the other hand, this court reasons that the change in beneficiaries in 2002 was a transfer of Wilson Phelps' "present interest in real property," even if that present interest is measured by a percentage of the former property, for purposes of the Revenue Code. The court does not believe that the transfer should be analyzed by comparing Wilson Phelps' interest to the historical interest of John Phelps in the property. Each of the other beneficiaries of John Phelps' Trust has his or her interest in the property, measured as a share of income. Wilson Phelps transferred his present interest in the property to his children essentially as tenants-in-common, each with a one quarter interest in the income form Wilson's interest in the property. That is a change of ownership under Revenue Code § 61(f). Even if it is not a tenancy In common, Revenue Code § 65.1 allow that a transfer of less than 100% of the ownership can trigger reassessment. In this case, the transfer of one quarter; interests to four beneficiaries would trigger a reassessment under Revenue Code § 65.1.

At first glance, sections 60 and 65.1 appear incompatible. How can a transfer of an interest as low as 5% trigger a reassessment, yet there is no change of ownership unless the value of the property transferred is "substantially equal to the value of the fee interest?" Resolution depends on what fee interest is at issue. Wilson Phelps' transfer meets the change in ownership definition because one

quarter, of his interest in the income is substantially equal to the value of the fee interest in one quarter: of (his interest in) the property. The primary economic value of this property is income, so the stream of income from the property is equal to the value of the fee interest. The parties do not challenge that getting the income from the property is substantially the same as owning the property in fee simple. The law supports that conclusion. See, e.g., Reilly v. City of County of San Francisco (2006) 142 Cal. App. 4th 480, 496.

As a contrary example, if Phelps had transferred the rights to only five years' income in the property to a beneficiary, reserving the rest for himself, there would not be a change in ownership under § 60. Likewise, if he had transferred a 4% interest in his share of the future income to a beneficiary, that would not require reassessment under § 65.1. In this case, thought, he transferred 100% of his rights and more than 5% of his interest in the property to each beneficiary, so the tests under both § 60 and § 65.1 are met.

The court concludes that the transfer on Wilson's death was a change in ownership entitling the Orange County Assessor to do a reassessment. The Application for a Writ is therefore - DENIED.

Orange County Assessor to provide an Order and Judgment

Clerk to give notice.

ENTERED: 3/20/08

APPENDIX C — DECISION AND FINDINGS OF FACT OF THE ASSESSMENT APPEALS BOARD NO. 1 FOR THE COUNTY OF ORANGE, DATED MAY 23, 2007

ASSESSMENT APPEALS BOARD NO. 1
FOR THE COUNTY OF ORANGE

IN RE: ASSESSMENT APPEAL APPLICATION
OF THE JOHN WILSON PHELPS TRUST
FOR CHANGE IN 2004 AND 2005
SUPPLEMENTAL AND ESCAPE
ASSESSMENTS

Application Number 04-007923;
04-007924; 04-007925; 04-007926;
04-008516; 05-000956; 05-000957;
05-000958; 05-000959; 05-000960;
05-000961

FINDINGS OF FACT

The above-entitled applications for change in assessment came regularly for hearing on March 15, 2006, before Assessment Appeals Board No. 1. Per request of the parties, all of the above-referenced appeals were consolidated into one hearing. (*See* Letter to Clerk of the Board of Supervisors from Stephen H. Bennett, dated October 25, 2005.) The members of the Board were James Larkin, Jerry McCloskey, and Mary Aileen Matheis, Chairperson. The John Wilson Phelps Trust, an irrevocable trust (hereinafter referred to as "Applicant" or sometimes "Trust"), was represented by Attorney Paul D. Draper. The Orange County Assessor

(hereinafter referred to as "Assessor") was represented by Deputies Assessor Al Saguero, Jeff Kajkowicz, Sy Kashkooli, and Deputy County Counsel Laurie Shade. The Board also heard the testimony of Howard B. Jones, a general partner of a real estate development company specializing in development and remodeling of retail shopping centers, and the testimony of Steven H. Bennett, a Certified Public Accountant, both of whom testified on behalf of the Applicant.

At the outset of the hearing, Applicant informed the Board that Applicant and Assessor agreed there is no dispute regarding the facts of this case and that the parties had stipulated orally to a bifurcation of the hearing. Receiving no objection from the Assessor, the Board approved the stipulation. Per the stipulation, the first hearing would be devoted to determining the issue of whether a change of ownership had occurred and the next hearing, if necessary, would determine valuation.

Following receipt of evidence, both oral and documentary, and after hearing the argument of the parties, the Board took the issue of change of ownership under submission. In a letter dated April 3, 2006, the Board informed the parties that it found sufficient evidence to determine a reassessment event had occurred and scheduled the hearing on valuation for August 28, 2006. The August 28, 2006 hearing was subsequently postponed until August 30, 2006. At the August 30, 2006, hearing Applicant requested the Board reconsider its decision that a change of ownership had occurred. In response, the Board asked the parties to submit briefs on the issue to the

Board prior to a hearing scheduled for November 16, 2006. During the remainder of the August 30, 2006, hearing, the parties presented evidence regarding the valuation of two of the parcels involved in these proceedings. The November 16, 2006, hearing was subsequently continued to November 30, 2006. The hearing was concluded on November 30, 2006, and the entire matter was taken under submission by the Board. The Board thereafter began deliberations in closed session on January 25, 2007, meeting in closed session again on April 9, 2007, before reaching its decision. The Applicant requested Findings of Fact, and being fully advised, the Board now makes the following Findings of Fact and decision:

FINDINGS OF FACT

1. The issues before this Board involve both legal and valuation issues. They are: (i) whether a change of ownership, as defined by §60 of the Revenue and Taxation Code, occurred upon the death of Wilson W. Phelps, a beneficiary of the John Wilson Phelps Trust, and the passing of Wilson W. Phelps' 1/3 interest in the Trust to his four children, and (ii) the current fair market value of the property owned by the Trust if a change of ownership did occur. A related legal issue presented to the Board for its determination is whether the Trust was the owner of property referred to by the parties as Parcel 10 at the time of the death of Wilson W. Phelps.

2. On March 21, 1945, John Wilson Phelps executed his Last Will and Testament. (Applicant's Exhibit 1, Tab 2, page 3.) John Wilson Phelps' Last Will and Testament

created within it a trust. (*Supra,* page 1, line 17.) Upon the death of the trustor, John Wilson Phelps, the Trust became irrevocable. (*Supra,* Tab 1, page 4, lines 9-10.)

3. The Trust's initial trustees were David E. Bradley, Wilson W. Phelps, and Adele N. Phelps. The trustees were directed to hold the Trust's property in trust during the lifetime of the trustor's spouse, Adele N. Phelps, the lifetimes of his three children, Wilson W. Phelps, Arthur D. Phelps, Adele Phelps Spellacy, and the lifetimes of the trustor's grandchildren living at the time of his death. The Trust will terminate when only one of the above-listed persons is still living, *(Supra,* Tab 1, page 4, lines 15-21.)

4. Upon the death of the trustor in 1947, the Trust instrument directed that the Trust's net income be divided among four beneficiaries as follows: One-half of its net income to Adele N. Phelps and one-half of its net income to be divided in equal shares among - Wilson W. Phelps, Arthur D. Phelps, and Adele Phelps Spellacy (each receiving 1/6 of the Trust's net income). The Trust provided that if any of the trustor's children died before the termination of the Trust their issue would take *per stirpes.* If any of the trustor's children died without issue, the decedent's share of the Trust's net income was to be divided among the other children. *(Supra,* page 5, lines 12-19.)

5. Adele N. Phelps died in 1970, and her one-half interest in the net income from the Trust was divided equally among the three children, who now each was entitled to a 1/3 interest in the Trust's net income. As of

January, 2002, the Trust had three trustees, Wilson W. Phelps, John W. Phelps II, and James S. Phelps. Wilson W. Phelps died on April 16, 2002. (*Id.* lines 20-24), and according to the terms of the Trust, his one-third income interest passed in equal shares to his four children. Applicant, however, did not record a notice of death until two years later in 2004. (Assessor's Response to Applicant's Closing Brief, page 3, lines 9-10.)

6. Upon receiving notice in 2004 of the death of Wilson W. Phelps Assessor concluded that a change of ownership occurred upon his death, reassessed 1/3 of the value of the underlying real property owned by the Trust, and levied escape assessments against the Trust. Applicant challenges the conclusion of the Assessor, arguing: Firstly, the Assessor ignored the requirement that the interest transferred be substantially equal to the value of the fee. Secondly, the Assessor ignored the requirement that the beneficial use of real property be transferred. Thirdly, neither the Assessor nor the State Board of Equalization ("SBE") can interpret or promulgate any administrative rule which conflicts with the basic requirements for a change in ownership defined by §60 of the Revenue and Taxation Code. (Applicant's Exhibit 1, Tab 1, pages 2-3.) The requirements for a change of ownership contained in §60 as summarized by Applicant are: "(1) it must convey a present interest in real property, (2) it must convey beneficial use of the real property, and (3) it must convey an interest in real property that is substantially equal to the value of the fee interest." (*Id.* at page 2, lines 15-18.)

7. The Trust estate includes parcels of real property located within the City of Fullerton, County of Orange, California, and ownership interests in certain partnerships. (*Supra,* Tab 1, page 4, paragraph 2.) Assessor and Applicant differ, however, on the number of Trust owned parcels. Assessor argues the Trust owns three (3) parcels of real property, identifying them as Parcel 10 located at 450 S. Highland Boulevard, containing an apartment complex known as Rose Pointe Apartments, and Parcels 11 and 14 which are located at 1331 S. Harbor Boulevard and are part of a shopping center in which the primary tenant is a Target store. (Assessor's Response to Applicant's Closing Brief, page 2, lines 20-23.) Applicant counters that the Trust does not own Parcel 10, having transferred ownership of this particular parcel as its initial capital contribution to Metro Apartments, a California general partnership, in 1986, prior to the death of Wilson W. Phelps. Applicant identifies the other partner in the partnership as Fullerheim Partners, Ltd., owner of the adjacent Parcel 9, which Applicant informs the Board Fullerheim Partners, Ltd., contributed to the Metro Apartments partnership as its capital contribution. (Applicant's Exhibit 4, page 5, lines 13-14.) Applicant states further that on December 2, 1986, the two general partners of the partnership filed a Fictitious Business Name Statement attesting to the fact that they were doing business as Metro Apartments, adding that Metro Apartments maintains its own separate bank account for funds related to the apartment, borrowed money in its own name to pay for the improvements, and files its own taxes for the income from the property. (*Id.* lines 16-18; see also, Applicant's Exhibit 3, Tabs 26-34.)

Assessor responds that Applicant never recorded any deeds or provided the Assessor with any notice since the date of the alleged transfer of Parcel 10 to the partnership to substantiate the claim that Parcel 10 was transferred to the partnership, as Applicant now contends. (Assessor's Response to Applicant's Closing Brief, page 3, lines 18-23.) Assessor further suggests that "in the event the Board finds that Metro and not the Trust owns Parcel 10 such that no change in ownership occurred upon Wilson Phelps' death in 2002, the Board must also find that in 1986, when the Trust contributed Parcel 10 and Fullerheim Partners, Ltd., Contributed Parcel 9 to the legal entity partnership, that Metro became the new owner of both parcels at that time. [*See* Applicant's Closing Brief, p. 5, lines 17-23]. However, said transfer would not be considered a change in ownership for property tax purposes pursuant to Revenue and Taxation Code §62(a)(2) and Property Tax Rule 462.180(b)(2)." (Assessor's Response to Applicant's Closing Brief, page 4, lines 5-11.)

8. In arriving at a value for Parcels 11 and 14, Assessor informs the Board that it utilized both a comparable sales approach and an income approach to value. (Assessor's Exhibit C.) The combined square footage of both parcels as provided by the Assessor in reliance upon its records is 737,035; net rentable area of both parcels is listed as 207,528 square feet. (*Id.* page 8.) Pursuant to the Income Approach, the Assessor determined the value of Parcels 11 and 14 to be $27,740,000, with an adjusted value per square foot of $133.67. Using the Comparative Sales Approach, the Assessor determined the values of Parcels 11 and 14 to be $26,564,000, or $128.00 per square foot. (*Id.*)

9. Applicant did not present the Board with an appraisal, relying exclusively instead on the oral testimonies of Howard B. Jones and Steven H. Bennett. (*See,* Applicant's Exhibit 3, Tab 41.) In his testimony, Mr. Jones told the Board that there are no properties comparable to the subject property due to its "decrepit condition and big box configuration." Mr. Jones added that the rent the Assessor was using in his income approach to value was too high.

Mr. Bennett's testimony addressed the validity of the income figures used by the Assessor in his calculation of income as part of the capitalization approach. At the conclusion of Mr. Bennett's testimony, Applicant informed the Board that it accepted "[e]verything in the assessor's appraisal on your direct capitalization sheet... [w]e accept your cap rate ... [w]e accept your expense rates, everything." The only thing challenged by Applicant were the figures used by the Assessor as the gross annual rental income for Parcels 11 and 14. (Transcript from August 30, 2006, hearing, page 82, lines 2-8.) Applicant's opinion of value for Parcels 11 and 14 is $5,849,000. (Supra, pages 82-83, lines 23-25; 1-3.)

10. A brief recitation of the facts presented by the parties to the Board with respect to Parcels 11 and 14 is as follows: In 1964, Applicant, as owner of legal title to Parcels 11 and 14, entered into a long-term lease with Montgomery Wards ("Wards"). (*See,* Applicant's Exhibit 3, Tab 40.) In 1986, a sublease was entered into between Wards and Anaton Associates ("Anaton") for a portion of the property. (*See,* Applicant's Exhibit 3, Tab 41, page 1.)

Appendix C

In 2001, following Wards' bankruptcy, Target Corporation ("Target") took over as lessee under the lease agreement and also took over the sublease with Anaton. According to the Fourth Amendment to Lease and Second Amendment to Sublease (Applicant's Exhibit 3, Tab 41), the sublease included pads B, C, D, E, F and a new pad G, but no longer included pad A which was assumed by the lessee, Target. (*See,* Applicant's Exhibit 3, Tab 41, page 3.) Consequently, at all relevant times between 1964 and the present, Applicant was the owner of legal title to Parcels 11 and 14 with Wards and later Target holding only a leasehold interest in the property.

11. In the absence of evidence to the contrary, it is presumed by this Board that the Assessor has properly performed his duties. (California Evidence Code §664; *E.E. McCalla Co. v. Sleeper* (1930) 105 Cal. App. 562, 568.) Additionally, Applicant must present independent evidence relevant to the full value of the property or other issue presented by the application. (Assessment Appeals Manual (2003), Chapter 7, page 84) With regards to the burden of proof in assessment appeals hearings, Revenue and Taxation Code §167 provides:

> (a) Notwithstanding any other provision of law to the contrary, and except as provided in subdivision (b), there shall be a rebuttable presumption affecting the burden of proof in favor of the taxpayer or assessee who has supplied all information as required by law to the assessor in any administrative hearing involving the imposition of a tax on an owner-

occupied single-family dwelling, the assessment of an owner-occupied single-family dwelling pursuant to this division, or the appeal of an escape assessment.

(b) Notwithstanding subdivision (a), the rebuttable presumption described in that subdivision shall not apply in the case of an administrative hearing with respect to the appeal of an escape assessment resulting from a taxpayer's failure either to file with the assessor a change in ownership statement or a business property statement, or to obtain a permit for new construction.

12. The holder of legal title to property is presumed to be the owner of the full beneficial title. *Auerbach v. Assessment Appeals Board No. 1 of the County of Los Angeles* (2006) 39 Cal. 4th 153, 163, (*Auerbach*) quoting *Pacific Southwest Realty Co. v. County of Los Angeles* (1991) 1 Cal. 4th 155, 164, and Evidence Code Section 662. Although receiving rent on leased property is one way a lessor can have the beneficial use of the property, it is not the only way. *Auerbach* at 163. In the case before this Board, the Trust as the lessor of the property, and the beneficiaries of the Trust, receive income in the form of rent from the lessee and indirectly from the sublease (Applicant's Exhibit 1, Tab 1, page 2, lines 21-24).

13. Pursuant to California Code of Regulations, Rule 462.160 subsection (a), a transfer by a trustor, or any other person, of real property into a trust is a change of

ownership of such property at the time of the transfer. Subsection (b)(1)(A) of that same Rule provides that a change of ownership of trust property occurs to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust unless otherwise excluded from change in ownership. Under Rule 462.260(c), the date for change of ownership is the date of death of the decedent.

14. Revenue and Taxation Code §65.1 provides in pertinent part as follows, "except for a joint tenancy interest as described in subdivision (f) of Section 62, when an interest in a portion of real property is purchased or changes ownership, only the interest or portion transferred shall be reappraised." Assessors Handbook Section 501, at pages 137-138, provides that "if a fractional change in ownership occurs, the portion that changes ownership is given a new base year value based upon its current market value as of the date of the change in ownership and the portion that did not change ownership retains its existing adjusted base year value."

15. In the case, *Reilly v. City and County of San Francisco* (2006) 142 Cal.App.4th 480, (rehearing denied by *Reilly v. City & County of San Francisco,* 2006 Cal. App. LEXIS 14792 (Cal., Dec. 13, 2006), the appeals court upheld the lower court ruling that a change in trust beneficiaries triggers a change in ownership. In *Reilly,* defendant city reassessed real property held by a trust after a new income beneficiary succeeded one who died. Plaintiff trustee had filed suit for a tax refund, arguing there was no change in ownership under

Revenue and Taxation Code §60, for reasons similar to Applicant's argument in this case. The Superior Court of San Francisco County, granted summary judgment for the city reasoning there was a change of ownership under §60 because the prior beneficiary's death caused a transfer of the property's primary economic value to the successor beneficiary, who acquired a present beneficial interest in the property. The court reasoned that for the rest of his life, the successor beneficiary was entitled to the net income generated by the trust property, even though he did not have a right to occupy the property. To the extent that trust property might be sold, the successor beneficiary would still receive its primary economic value because he would enjoy the net income from the proceeds of any property sale for the duration of his life. Because a change in ownership may occur by operation of law or through a trust, the court said a formal transfer of legal title was not required. The court added that while it might be true that the successor beneficiary did not directly have an "estate" in property, he nevertheless held an equitable life interest in the property through the trust. (142 Cal. App.4th at 497.)

16. Understandably, Applicant and Assessor differ in opinion as to how this Board should apply the decision in *Reilly* to the facts of this case. Applicant argues to the Board that the decision in *Reilly* fully supports Applicant's position because the beneficiary in *Reilly* was the sole present income beneficiary and succeeded to 100% of the income generated by the trust's real property for the duration of his life. (Applicant's Closing Brief, page 15, lines 7-9, citing *Reilly* at page 2.) Assessor argues that

the *Reilly* case supports the Assessor's position that a reassessment change of ownership event occurred upon the death of Wilson W. Phelps in 2002 and the subsequent transfer of his 1/3 beneficial interest in the Trust to his four children.

The Board finds Assessor's interpretation of *Reilly* to be more persuasive, that is, there is a change of ownership when an income beneficiary of the trust dies and is succeeded by another income beneficiary, (Orange County Assessor's Response to Applicant's Closing Brief, page 8, lines 23-24, citing *Reilly* at 485), regardless of the percentage interest transferred. As stated by Assessor, "[t]he only difference between this case and *Reilly* is that the transfer was of a partial interest," (*Supra* at page 9, lines 1-2), but the *Reilly* court did not say, because the issue was not before it, that a partial transfer of less than 100% would not constitute a transfer or change of ownership for reassessment purposes. Assessor additionally correctly notes that "[t]he *Reilly* court also held that 'the receipt of income generated by property qualifies as 'beneficial use' of the property; possession is not required.' *Id.*, at 496." (*Supra* at page 9, lines 9-10.) For this Board to accept Applicant's argument that no change of ownership event can occur unless 100% of the interest in the property transfers would render portions of the Revenue and Taxation Code such as §65.1 meaningless.

WHEREFORE, based on the foregoing Findings, this Board makes the following decision:

Appendix C

DECISION

For Assessment Appeal Petition Nos. 04-008516, 05-000956, 05-000957, 05-000958, 05-000959, 05-000960, and 05-000961, this Board determines a change of ownership occurred with regards to the 1/3 interest of Wilson W. Phelps in the Trust, in particular his interest in Parcels 11 and 14, upon his death in 2002 and the passing of his Trust interest to his four children. Accordingly, the Board sustains the Assessor with regards to Parcels 11 and 14 as shown in the following table:

Petition No.	APN	Bill No.	Roll Yr.	Appeal Type	Assessed Value	Full Cash Value
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
05-000956	073-052-11.0100	None	2001	Supplemental	Supp. Value	FCV
					Land 3,835,633	Land 5,249,749
					Imps 1,065,669	Imps 7,449,922
					Total 4,701,302	Total 12,699,871
05-000957	073-052-11.0200	None	2002	Supplemental	Supp. Value	FCV
					Land 3,603,351	Land 5,249,749
					Imps 937,984	Imps 7,449,922
					Total 4,541,335	Total 12,699,871
04-008516	073-052-11	05-554274	2004	Escape	Escape Only	
					Land 3,744,038	Land 5,454,717
					Imps 1,037,764	Imps 9,930,932
					Total 4,781,802	Total 15,385,649
[illegible]	[illegible]	[illegible]	073-052-14	[illegible]	[illegible]	[illegible]
05-000958	073-052-14.0200	None	2001	Supplemental	Supp. Value	FCV
					Land 624,772	Land 937,198
					Imps 428,367	Imps 1,010,285
					Total 1,053,139	Total 1,947,483
05-000959	073-052-14.0300	None	2002	Supplemental	Supp. Value	FCV
					Land 618,524	Land 937,198
					Imps 416,729	Imps 1,010,285
					Total 1,035,253	Total 1,947,483
05-000960	073-052-14	05-554271	2003	Escape	Escape	FCV
					Land 630,589	Land 955,636
					Imps 425,063	Imps 1,030,490
					Total 1,055,652	Total 1,986,126
05-000961	073-052-14	05-554272	2004	Escape	Escape	FCV
					Land 642,362	Land 973,477
					Imps 432,999	Imps 1,092,245
					Total 1,075,361	Total 2,065,722

However, as stated on the record at the hearing on November 30, 2006, with regards to Assessment Appeal Petition Nos. 04-007923, 04-0077924, 04007925, and 04-007926, the Board finds that no such change of ownership occurred upon the death of Wilson W. Phelps in 2002, because although the Trust retained legal title to Parcel 10, beneficial ownership of Parcel 10 was transferred by Wilson W. Phelps to Metro Apartments in 1986, and Metro Apartments became beneficial owner of Parcel 10 at that time. Where appropriate, the Assessor is directed to make the necessary adjustments in the assessment for subsequent years.

DATED: May 23, 2007

Mary Aileen Matheis, Chairperson
Assessment Appeals Board No. 1

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Appendix C

APPENDIX D — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW OF THE DECISION OF COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE, FILED DECEMBER 1, 2010

Court of Appeal, Fourth Appellate District,
Division Three – No. G040428

S186765

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JAMES S. PHELPS, as Trustee, etc.,

Petitioner and Appellant,

v.

ORANGE COUNTY ASSESSMENT APPEALS BOARD No. 1,

Defendant and Respondent;

WEBSTER J. GUILLORY, as Assessor, etc.,

Real Party in Interest and Respondent.

The petition for review is denied.

Kennard, J., was recused and did not participate.

GEORGE
Chief Justice